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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. SCOTT LONDON AND BRYAN SHAW, Defendants.	Case No. **COMPLAINT**

Plaintiff Securities and Exchange Commission (the "SEC") alleges as follows:

<u>JURISDICTION AND VENUE</u>

1. The SEC brings this action pursuant to Sections 21(d) and 21A of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d) & 78u-1.

2. This Court has jurisdiction over this action pursuant to Sections 21(e), 21A and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e), 78u-1 & 78aa.

3. In connection with the conduct described in this complaint, Defendants, directly or indirectly, made use of the means or instrumentalities of

interstate commerce, or the mails, or the facilities of a national securities exchange.

4. Venue is proper in this district under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because a substantial portion of the conduct alleged in this complaint occurred within the Central District of California. As alleged in this complaint, much of the conduct arose out of Defendant Scott London's misappropriation of material non-public information while he worked in Los Angeles, California and out of Defendant Bryan Shaw's trading on that information while living and working in Lake Sherwood and Encino, California, respectively.

SUMMARY OF THE ACTION

5. This SEC enforcement action concerns insider trading by Defendants Scott London ("London") and Bryan Shaw ("Shaw") between 2010 and 2012 in the securities of five companies which were clients of KPMG LLP ("KPMG"). London, until his recent termination resulting from his conduct alleged in this complaint, was a lead partner at KPMG and used his position at KPMG to misappropriate material, non-public information regarding these five companies. He passed this material, non-public information, which concerned the companies' upcoming release of financial results and earnings or merger announcements, to his friend and co-Defendant Shaw, who then traded in the companies' securities using that information.

6. By providing Shaw with material, non-public information concerning KPMG clients, London breached a duty of trust and confidence that he owed to KPMG and clients he audited. London and Shaw have both admitted their illegal conduct. London also notified KPMG of his actions on or about April 5, 2013, causing the firm to immediately terminate him.

7. Shaw made at least $1.27 million in illicit profits by knowingly trading on the material, non-public information that London provided him in

violation of London's duty of trust and confidence owed to KPMG and clients he audited. In exchange for this information, Shaw paid London $50,000 in cash and provided him with jewelry, meals and tickets to entertainment events, as well as other benefits.

8. By engaging in this conduct, Defendants London and Shaw violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5. The SEC, therefore, seeks permanent injunctions prohibiting future violations, disgorgement of ill-gotten gains together with prejudgment interest, and civil penalties.

DEFENDANTS

9. **Scott London**, CPA, age 50, resides in Agoura Hills, California. Until his termination on April 5, 2013, London was the partner in charge of KPMG's Pacific Southwest audit practice. He had been employed by KPMG since 1984, and has been licensed as a CPA in California since 1987. London is licensed as a CPA in Nevada as well.

10. **Bryan Shaw**, age 52, resides in Lake Sherwood, California. Shaw is the owner and operator of a jewelry business located in Encino, California.

RELEVANT ENTITIES

11. **KPMG LLP** is a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. KPMG is registered with the Public Company Accounting Oversight Board. At all relevant times and continuing to the present, KPMG has provided auditing and other services to a variety of companies whose securities are registered with the SEC and traded in U.S. markets.

12. **Herbalife, Ltd.** ("Herbalife") is a Cayman Islands corporation whose offices are located in Los Angeles, California. Herbalife is a global network

marketing company that sells weight loss, nutritional supplements, and other products through a network of independent distributors. Herbalife's common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act, and its shares trade on the New York Stock Exchange. Until April 8, 2013, Herbalife was a KPMG audit client. On April 9, 2013, Herbalife filed a Form 8-K announcing that KPMG had concluded it was not independent because of alleged insider trading in the company's securities by one of KPMG's former partners. KPMG resigned as Herbalife's auditor and withdrew its previously issued audit reports for the fiscal years ended December 31, 2010, 2011 and 2012.

13. **Skechers USA, Inc.** ("Skechers") is a Delaware corporation whose offices are located in Manhattan Beach, California. Skechers designs and markets footwear for men and women. Skechers's common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act, and its shares are traded on the New York Stock Exchange. Until April 8, 2013, Skechers was a KPMG audit client. On April 9, 2013, Skechers filed a Form 8-K announcing that KPMG had concluded it was not independent because of alleged insider trading in the company's securities by one of KPMG's former partners. KPMG resigned as Skechers' auditor and withdrew its previously issued audit reports for the fiscal years ended December 31, 2011 and 2012.

14. **Deckers Outdoor Corp.** ("Deckers") is a Delaware corporation whose offices are located in Goleta, California. Deckers is a designer, producer, marketer and brand manager of footwear, apparel and accessories. Deckers's common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act, and its shares are traded on the Nasdaq Global Select Market. Deckers is a KPMG audit client.

15. **RSC Holdings, Inc.** ("RSC Holdings") was a Delaware corporation whose offices were located in Scottsdale, Arizona. RSC Holdings was an

equipment rental provider. RSC Holdings's common stock was formerly registered with the SEC pursuant to Section 12(b) of the Exchange Act, and its shares were traded on the New York Stock Exchange. On May 15, 2012, RSC Holdings terminated its securities registration with the SEC pursuant to Rules 12g-4(a)(1) and 12h-3(b)(1)(i) of the Exchange Act. RSC Holdings was a KPMG audit client.

16. **Pacific Capital Bancorp.** ("Pacific Capital") was a Delaware corporation whose offices were located in Santa Barbara, California. Pacific Capital was a bank holding company. Pacific Capital's common stock was formerly registered with the SEC pursuant to Section 12(b) of the Exchange Act, and its shares were traded on The Nasdaq Stock Market. On December 18, 2012, Pacific Capital terminated its securities registration with the SEC pursuant to Rules 12g-4(a)(1) and 12h-3(b)(1)(i) of the Exchange Act. Pacific Capital was a KPMG audit client.

FACTS

A. Defendants London and Shaw

17. Until he was terminated on April 5, 2013, London was the partner in charge of KPMG's Pacific Southwest audit practice. He was the lead partner on several KPMG audits, including the audits of the financial statements of Herbalife and Skechers. He was also the account executive for Deckers, also a KPMG client.

18. Shaw and London first met one another in 2005, shortly after Shaw joined a country club where London was a member. He and London quickly became close friends, frequently playing golf together, as well as regularly socializing with each other's families.

19. In 2010, London began providing Shaw with material, non-public information concerning certain KPMG clients. Shaw's family-run jewelry business had begun faltering in 2009 as a result of the economic downturn, and

London has admitted that he was trying to help Shaw due to his economic situation.

20. Shaw knew, or was reckless in not knowing, that the information London was providing him was non-public, and that London should not have been doing so. Shaw also knew, or was reckless in not knowing, that he should not have traded on the basis of the information he received from London.

21. Shaw and London communicated about the non-public information almost exclusively using their cellular telephones, although on at least one occasion, London disclosed non-public information in the presence of others during a golf outing.

B. London and Shaw Engaged in Insider Trading

1. Trading in Advance of Earnings Announcements and Releases of Financial Results for Herbalife, Skechers and Deckers

22. London was the lead audit partner at KPMG for Herbalife and Skechers, and therefore was able to obtain material, non-public information regarding each company before each company announced its earnings or issued its financial results. He was also the KPMG account executive for Deckers and therefore was able to obtain material, non-public information regarding Deckers before its earnings announcements.

23. Prior to public announcements, Shaw received material non-public information from London about numerous earnings announcements and releases of financial results for Herbalife, Skechers and Deckers. Shaw traded upon that information by purchasing either options or stock, which he then sold following these announcements and releases. London provided material non-public information and Shaw traded on the following announcements and releases:

(a) The earnings announcement for Deckers's third quarter 2010 results took place on October 28, 2010. On that same date, and in advance of the

earnings announcement, Shaw purchased 25 call options for Deckers common stock. Deckers's stock price increased 7.6% after the announcement.

(b) Herbalife's Form 10-Q for the third quarter of 2010 was released on November 1, 2010. On October 27 and October 28, 2010, in advance of the release, Shaw purchased 35 call options for Herbalife common stock. Herbalife's stock price increased 3.38% after its Form 10-Q was released.

(c) The earnings announcement for Skechers's fourth quarter 2010 results took place on February 16, 2011. Between January 25 and February 16, 2011, Shaw placed over 20 telephone calls to London. On February 15 and 16, 2011, in advance of the earnings announcement, Shaw purchased 215 put options for Skechers common stock. Skechers's stock price did not materially change following the announcement.

(d) Herbalife's Form 10-K for the fiscal year ended December 31, 2010 was released on February 22, 2011. Between January 25 and February 22, 2011, Shaw placed over 20 telephone calls to London. Between January 27 and February 16, 2011, in advance of the release, Shaw purchased 210 call options and 1,300 shares of Herbalife common stock. Herbalife's stock price increased 9.16% after its Form 10-K was released.

(e) The earnings announcement for Skechers's first quarter 2011 results took place on April 27, 2011. Between April 1 and April 25, 2011, Shaw placed at least ten telephone calls to London. Between April 19 and April 26, 2011, in advance of the earnings announcement, Shaw purchased 425 put options for Skechers common stock. Skechers's stock price declined 7.5% after the earnings announcement.

(f) Herbalife's Form 10-Q for the first quarter of 2011 was released on May 2, 2011. Between April 1 and April 30, 2011, Shaw placed more than 10 telephone calls to London. Between April 27 and May 2, 2011, in advance of the

release, Shaw purchased 305 call options for Herbalife common stock. Herbalife's stock price increased 13.26% after its Form 10-Q was released.

(g) The earnings announcement for Skechers's second quarter 2011 results took place on July 27, 2011. Between July 15 and July 25, 2011, Shaw placed three telephone calls to London. Between July 19 and July 21, 2011, in advance of the earnings announcement, Shaw purchased 1,195 put options and short sold 10,000 shares of Skechers's common stock. Skechers's stock price increased 18.5% after the announcement.

(h) Herbalife's Form 10-Q for the second quarter of 2011 was released on August 1, 2011. Between July 15 and August 1, 2011, Shaw placed six telephone calls to London. Between July 22 and August 1, 201, in advance of the release, Shaw purchased 769 call options and 5,000 shares of Herbalife common stock. Herbalife's stock price increased 5.68% after its Form 10-Q was released.

(i) The earnings announcement for Skechers's third quarter 2011 results took place on October 26, 2011. Shaw and London spoke by telephone on October 26, 2011 for seven minutes. On October 26, 2011, in advance of the earnings announcement, Shaw purchased 140 put options for Skechers common stock. Skechers's stock price declined 5.5% after the announcement.

(j) The earnings announcement for Deckers's third quarter 2011 results took place on October 27, 2011. Shaw and London spoke by telephone on October 26, 2011 for seven minutes. On October 26, 2011, in advance of the earnings announcement, Shaw purchased 55 call options for Deckers common stock. Deckers's stock price increased 10.8% after the announcement.

(k) Herbalife's Form 10-K for the fiscal year ended December 31, 2011 was released on February 21, 2012. Between February 6 and February 21, 2012, Shaw placed over 15 telephone calls to London. Between February 10 and February 21, 2012, in advance of the release, Shaw purchased 345 call options for

Herbalife common stock. Herbalife's stock price increased 6.96% after its Form 10-K was released.

(l) The earnings announcement for Deckers's fourth quarter 2011 results took place on February 23, 2012. Between February 6 and February 23, 2012, Shaw placed over 15 telephone calls to London. On February 22 and February 23, 2012, in advance of the earnings announcement, Shaw purchased 155 put options for Deckers common stock. Deckers's stock price declined 13.8% after the announcement.

(m) The earnings announcement for Deckers's first quarter 2012 results took place on April 26, 2012. Between April 17 and April 26, 2012, Shaw placed at least five telephone calls to London. Between April 19 and April 26, 2012, in advance of the earnings announcement, Shaw purchased 222 put options for Deckers common stock. Deckers's stock price declined 25.38% after the announcement.

24. Shaw realized gross profits of at least $714,389 from the trades identified and described in sub-paragraphs 23(a)-(m) above.

2. Trading in Advance of Merger Announcements for RSC Holdings and Pacific Capital

a. The RSC Holdings and United Rentals Merger

25. RSC Holdings was a KPMG audit client until at least December 2011. On December 15, 2011, United Rentals, Inc. ("United Rentals") announced that it was acquiring RSC Holdings for $18 per share, in a cash and stock transaction valued at $1.9 billion.

26. In advance of this announcement, London learned information about RSC Holdings's upcoming merger with United Rentals while in KPMG's Phoenix office on other business. London initiated a call to Shaw on December 14, 2011 and shared with Shaw material, non-public information concerning the merger.

27. Acting on London's tip, between December 14 and 15, 2011, and in advance of the announcement of the merger, Shaw purchased 27,000 shares of RSC Holdings common stock. Following the announcement of the merger, RSC Holdings's stock increased 58%, on volume of 63 million shares, compared to the prior day's volume of less than one million shares. Shaw sold his RSC Holdings stock shortly after the announcement, and realized a profit of at least $191,000.

b. The Pacific Capital and Union Bank Merger

28. Pacific Capital was a KPMG audit client until at least March 2012. On March 9, 2012, UnionBanCal Corporation ("Union Bank") announced that it had acquired Pacific Capital for $46 per share in a transaction valued at $1.5 billion.

29. Based on his position at KPMG, London had access to non-public information concerning Pacific Capital and its upcoming merger with Union Bank in advance of the merger announcement. Sometime in early February 2012, London tipped Shaw and provided him with material, non-public information about the merger.

30. Acting on London's tip, between February 8 and March 9, 2012, and in advance of the announcement of the merger, Shaw purchased 12,225 shares of Pacific Capital common stock and 120 call options. After the announcement, Pacific Capital's stock increased 57% on increased trading volume of 2.1 million shares, as compared to 13,000 shares traded on the prior day. Shaw ultimately realized a profit of at least $365,000 on the Pacific Capital stock and call options he purchased.

C. <u>Shaw's Kickbacks to London</u>

31. Shaw compensated London for passing him non-public information. Shaw paid London over $50,000 in cash, which he usually delivered to London in bags outside of Shaw's Encino, California jewelry store. Additionally, Shaw

routinely covered the costs of dinners and concerts the two men shared along with their families, even though London's income was significantly higher than Shaw's. Finally, Shaw gave London several pieces of expensive jewelry for his wife, and gave London a Rolex watch that Shaw valued at $12,000.

32. London received approximately $50,000 in compensation in cash, jewelry, and entertainment expenses in exchange for the information he provided to Shaw. In making tips to Shaw, London also obtained personal benefits, including, without limitation, reputational enhancement as a source of stock tips, gratitude for being the cause of trading profits, and the ability, through his misappropriation of information concerning corporate announcements and pending acquisitions and attendant breach of duty to his employer and its clients, to confer "gifts" of trading profits on his friend.

D. <u>The Aftermath</u>

33. On or about April 4 or 5, 2013, London informed KPMG that he was under investigation by the SEC and criminal authorities for insider trading in the securities of several of KPMG's clients. KPMG promptly terminated London. On April 8, 2013, KPMG announced that it was "resigning two clients after concluding today that the firm's independence has been impacted as a result [London's] behavior, and we have informed those companies it is necessary to withdraw our auditor reports." KPMG resigned as the auditor of Herbalife and Skechers, and withdrew its audit reports for Herbalife's fiscal years 2010, 2011 and 2012, and its audit reports for Skeckers's fiscal years 2011 and 2012. Both companies filed Form 8-Ks announcing this news on April 9, 2013, and there was a temporary halt in the trading in the securities of both issuers that day.

34. On the afternoon of April 9, 2013, London publicly released a statement in which he expressed his regret for his "actions in leaking non-public data to a third-party regarding the clients [he] served for KPMG." The statement,

which does not name Shaw, further states that his tips were done "in an effort to help out someone whose business was struggling," and that he "spoke on the phone" with Shaw, providing him with "suggestion[s]" as to which stocks to purchase, and that Shaw "traded on the information." The full text of London's April 9th statement is reprinted in the attached Appendix A.

35. Shaw also issued a public statement on April 10, 2013, in which he similarly expressed regret for his "wrongful conduct." In his statement, he stated that "[d]uring 2010 through 2012, I received non-public information from Scott London about a number of companies and then profited substantially from stock trades based upon that information." He further stated: "I accept full and complete responsibility for what I have done" and "expect that my actions will result in significant civil and criminal consequences." The full text of Shaw's April 10th statement is reprinted in the attached Appendix B.

E. London's Breach of His Fiduciary Duty to KPMG and Its Audit Clients

36. As a partner at KPMG, London owed a fiduciary duty of trust and confidence to KPMG. As a fiduciary, he was obligated to keep his firm's client information confidential and not to misappropriate it for his own financial or personal benefit.

37. As the lead KPMG audit partner for Herbalife and Skechers, London was also a temporary insider of Herbalife and Skechers, and therefore owed a fiduciary duty of trust and confidence to those clients. Herbalife and Skechers shared confidential information about their respective earnings and financial results for the corporate purpose of allowing KPMG to conduct its audits and reviews of the companies' financial results. London owed a duty to these clients and breached this duty when he tipped Shaw in advance of the earnings announcements and release of financial results by Herbalife and Skechers.

38. By providing Shaw with the material non-public information that

London misappropriated from KPMG and its audit clients, London breached a duty of trust or confidence he owed to KPMG and its audit clients.

F. Materiality of the Non-Public Information Provided by London to Shaw

39. For each of the instances described above where London misappropriated confidential and non-public information about KPMG clients and provided that information to Shaw, that information was material because it would be important to a reasonable investor in making his or her investment decision. There is a substantial likelihood that the disclosure of the information misappropriated by London and on which Shaw traded would have been viewed by a reasonable investor as having significantly altered the total mix of information available to investors.

G. Defendants' Scienter

40. London has admitted that he knew that passing material non-public information to Shaw was wrong, and acknowledged taking annual ethics training at KPMG which explicitly prohibited employees from disclosing inside information regarding clients.

41. Because of his experience as an audit partner at KPMG with responsibility for auditing publicly-traded companies, London was, or should have been, familiar with the federal securities laws concerning insider trading.

42. London knew or was reckless in not knowing that if he obtained access to confidential information in the course of his work at KPMG that he should maintain such information in confidence and not use that information to his personal benefit.

43. Shaw acted with scienter by trading in the securities of Herbalife, Skechers, Deckers, RSC Holdings and Pacific Capital while he was aware of material, non-public information he obtained from London.

44. At all relevant times, Shaw knew, or was reckless in not knowing, that

London, due to his position in the audit services unit at KPMG, had access to material, non-public information about earnings releases, financial results and prospective mergers involving KPMG's audit clients.

45. Shaw knew, or was reckless in not knowing, that if he obtained access to confidential information to which London had access in connection with his employment at KPMG, that Shaw should maintain such information in confidence and not use that information to his personal benefit.

46. Shaw knew, or was reckless in not knowing, that the information provided to him by London regarding Herbalife, Skechers, Deckers, RSC Holdings and Pacific Capital was confidential and material, non-public information.

CLAIM FOR RELIEF

Fraud In Connection With The Purchase Or Sale Of Securities

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

47. The SEC realleges and incorporates by reference paragraphs 1 through 46 above.

48. As alleged above, while a partner at KPMG, Defendant London learned material non-public information concerning KPMG audit clients. At all relevant times, London owed KPMG and its audit clients a fiduciary duty, or similar duty of trust or confidence, to maintain such information in confidence.

49. London, in breach of fiduciary duty or similar relationship of trust or confidence owed to KPMG and its audit clients, misappropriated the material, non-public information described above from KPMG and its audit clients in breach of his duties to them and used that information to tip Shaw, with whom he had a friendship.

50. Shaw knew, or was reckless in not knowing, that the information he received from London was material, non-public information that London had misappropriated from KPMG and its clients, and that it was unlawful for Shaw to

use the information for his benefit.

51. Shaw used the information he received from London to purchase and trade securities in Herbalife, Skechers, Deckers, RSC Holdings and Pacific Capital for his own benefit.

52. The misappropriated information was material because it would be important to a reasonable investor in making his or her investment decision. There is a substantial likelihood that the disclosure of the misappropriated information would have been viewed by a reasonable investor as having significantly altered the total mix of information available to investors.

53. At all relevant times, London and Shaw acted knowingly and/or recklessly by misappropriating material, non-public information about the earnings announcements and financial results of Herbalife, Skechers and Deckers, and the acquisitions of RSC Holdings and Pacific Capital, and, in Shaw's case, purchasing and trading in the securities of those issuers on the basis of that information. Because he was aware of the material non-public information at the time he purchased the securities, Shaw traded on the basis of that material non-public information.

54. By engaging in the conduct described above, London and Shaw, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

55. By engaging in the foregoing conduct, London and Shaw violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that London and Shaw committed the alleged violations.

II.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendants London and Shaw and their agents, servants, employees, attorneys and those persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

Order London and Shaw to disgorge the illegal trading profits described herein, plus prejudgment interest.

IV.

Order London and Shaw to pay civil penalties under Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable

application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: April 11, 2013

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